

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE: . Case No. 23-12825 (MBK)
LTL MANAGEMENT LLC, . Clarkson S. Fisher U.S.
Courtthouse
402 East State Street
Trenton, NJ 08608
Debtor. .
. April 11, 2023
. 9:59 a.m.
.

TRANSCRIPT OF MOTION BY MOVANT ANTHONY HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE AUTOMATIC STAY, SECOND AMENDED EX PARTE TEMPORARY RESTRAINING ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAITING THE FOURTEEN DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(A)(3) [71]; DEBTOR'S MOTION FOR AN ORDER EXTENDING THE TIME WITHIN WHICH IT MUST FILE ITS (I) SCHEDULES OF ASSETS AND LIABILITIES AND (II) STATEMENT OF FINANCIAL AFFAIRS [14]; DEBTOR'S MOTION FOR AN ORDER: (I) APPROVING THE CONTINUED USE OF ITS BANK ACCOUNT AND BUSINESS FORMS AND (II) AUTHORIZING THE DEBTOR'S BANK TO CHARGE CERTAIN FEES AND OTHER AMOUNTS [13]; DEBTOR'S APPLICATION PURSUANT TO 28 U.S.C. § 156(C) AND 11 U.S.C. § 105(A) FOR ENTRY OF AN ORDER AUTHORIZING THE APPOINTMENT OF EPIQ CORPORATE RESTRUCTURING, LLC AS CLAIMS AND NOTICING AGENT NUNC PRO TUNC TO THE PETITION DATE [11]; DEBTOR'S APPLICATION FOR DESIGNATION AS COMPLEX CHAPTER 11 CASE [6]; DEBTOR'S MOTION FOR AN ORDER SUSPENDING ENTRY AND SERVICE OF STANDARD NOTICE OF COMMENCEMENT [5]; DEBTOR'S MOTION FOR AN ORDER: (I) AUTHORIZING IT TO FILE A LIST OF THE TOP LAW FIRMS WITH TALC CLAIMS AGAINST THE DEBTOR IN LIEU OF THE LIST OF THE 20 LARGEST UNSECURED CREDITORS; (II) APPROVING CERTAIN NOTICE PROCEDURES FOR TALC CLAIMANTS; AND (III) APPROVING THE FORM AND MANNER OF NOTICE OF COMMENCEMENT OF THIS CASE [10]; DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 1505 FOR AN ORDER AUTHORIZING IT TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE [12]
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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1 (Proceedings commenced at 9:59 a.m.)

2 THE COURT: We have new technology here. Everything
3 is supposed to work better, more enhanced. Not just for you
4 all.

5 Well, okay. Good morning, again. This is the LTL
6 Management LLC matter and -- log in.

7 All right. We have a full plate on for today. A
8 number of matters. If I may, I'd like to take the liberty of
9 making a few preliminary comments.

10 My goal today is really to listen. Listen to
11 presentations, listen to arguments from all parties. Because
12 that's the intent, I am going to be somewhat generous in
13 allowing the use of the PowerPoints, the presentations, the
14 hyperbole, all of it. I want to hear from you all about this
15 case and the respective positions.

16 I've read a lot. We hear a lot. But this is where
17 it's important. In that regard, I'm cognizant that there's
18 been a significant amount of vitriol, ad hominem attacks,
19 lawyer versus lawyer, lawyers versus the Court, directed at
20 Johnson and Johnson, directed at groups. That's unfortunate.

21 I think we all need to a degree to have a bit of a
22 thin skin. I like to think the Court has a thick -- a thin
23 skin -- a thicker skin. Wrong analogy. A thicker skin. Some
24 may be familiar. I was a mayor of a small town in North Jersey
25 and there came a point in time when I would say more than half

1 my neighbors hated me and wanted me out. I would walk my
2 children to school and I would see lawn signs that were more
3 caustic than cats paws or stooge or any of the language what
4 we're seeing.

5 I did then what I hope to do now is just put my head
6 down and do what I think is right, and I urge everybody to do
7 the same. But let's try to raise our game. The world -- it's
8 a horrible phrase, but the world is watching, horribly overused
9 phrase. Let's show professionalism to each other, respect to
10 each other, civility to each other, and advocate zealously. I
11 expect that. As I said, I have a thick skin. I will do what I
12 think is right. I always try to do what I think is right and I
13 think you all do the same for your clients, and I respect that.

14 Let's start. I know we've been told there are a
15 plethora of PowerPoints to be had. We might as well start the
16 process. There are a number of matters on traditional first-
17 day matters and some more unusual first-day matters. Let me
18 turn to the debtor.

19 What I anticipate is an opening, and then I would go
20 to the Ad Hoc Committee for their opening, and then we can get
21 on to the specific relief being sought.

22 Good morning, Mr. Gordon. Long time.

23 MR. GORDON: Good morning, Your Honor. Greg Gordon,
24 Jones Day, on behalf of the Debtor. And I appreciate Your
25 Honor's opening remarks and thank you for scheduling the

1 hearing on shortened notice and making yourself available to us
2 so promptly after the filing of the case.

3 And I'll just say for the benefit of the record, I
4 think in some respects you've already done this. Our view was
5 that Agenda Item Number 1, the motion to lift stay filed by
6 Mr. Satterley, we think that should be heard at the end because
7 there's scheduling issues with respect to that that relate to
8 some of the other matters that we're going to be discussing
9 today. And so that would be our recommendation in terms of the
10 schedule.

11 I'm prepared to make an opening and then we'll be
12 prepared at the appropriate time after the responses to present
13 the motions for relief that we filed for today.

14 THE COURT: Great. Please continue.

15 As a housekeeping matter. Again, as we did in the
16 prior case, I'm not going to go through and have everybody
17 enter appearances. We'll do so when you rise to talk.

18 MR. GORDON: Thank you, Your Honor.

19 So shockingly, I'm not one of the ones who has a
20 PowerPoint presentation today. Your Honor is obviously very
21 familiar with the debtor. You're familiar with its corporate
22 structure. And that, of course, would include the corporate
23 restructuring that was done in 2021 shortly before the first
24 bankruptcy filing. You have good familiarity with the talc
25 litigation that had been plaguing LTL and J&J, and the former

1 J&J Consumer, Inc., well known as old JJCI, prior to the first
2 bankruptcy filing. So I don't plan to go over those things
3 again today.

4 But I did want to provide an update on corporate
5 structure. And what I wanted to focus on was the fact that,
6 and Your Honor probably saw this in the papers that we filed,
7 in December of last year, the debtor's parent company, J&J
8 Consumer, Inc., which we were referring to in the old case as
9 New JJCI, changed its name to Johnson and Johnson HoldCo
10 (NA), Inc., which I'll refer to today as HoldCo.

11 And in early January 2023, HoldCo distributed its
12 consumer business, it's consumer health business, that is, to
13 its parent company. So that is a change that's occurred with
14 respect to corporate structure. And although that business, as
15 Your Honor knows I think, represented a substantial portion of
16 HoldCo's assets, HoldCo does continue to have significant
17 value. And we mentioned in the papers that, among other
18 things, it holds \$400 million in cash. It also holds interest
19 in foreign subsidiaries that have a material value. And it
20 seems, based on the papers we've seen filed in the last few
21 days, that the other parties are overlooking the fact that that
22 other value exists.

23 Then I want to address, Your Honor, why LTL has filed
24 for bankruptcy a second time. And as with the first case, Your
25 Honor, I would say the purpose of the filing remains the same.

1 talc claimants. Committing to pay claimants the largest sum
2 that's ever been paid belies any allegations that an actual
3 fraudulent transfer or actual intent to harm claimants exists.

4 There's no constructive transfer either because LTL
5 has not been rendered insolvent by the new financing
6 arrangements. That issue is completely ignored in the pleading
7 that was filed by this Ad Hoc group yesterday. The new funding
8 arrangement from HoldCo is available to pay talc claims in and
9 outside bankruptcy, and it has significant values. And
10 importantly, J&J's support is available to ensure a trust is
11 funded in the amounts agreed to with the claimant's supporting
12 this plan.

13 So the question is, why is it the Committee doesn't
14 address insolvency? Was LTL rendered insolvent? The Third
15 Circuit pointed out and the Third Circuit knows that a showing
16 of insolvency is required. It said so in the Footnote 18 that
17 the other side characterizes as a warning in terms of what LTL
18 could do or not do.

19 And, Your Honor, as I indicated before, there were
20 questions that the company had as to whether the original
21 financing arrangements remained enforceable in the wake of the
22 Third Circuit's opinion. That decision was not reasonably
23 foreseeable. It defeated the fundamental purpose of J&J's
24 backstop. It called into question the enforceability of that
25 backstop and the funding agreement as a whole. But

1 notwithstanding that, LTL was able to secure new financing
2 arrangements that provided the funding it needs to provide the
3 amount negotiated with the claimants. In short, there was
4 reasonably equivalent value, too. There's no basis for these
5 accusations about fraudulent transfer and certainly no evidence
6 has been submitted to support any of that.

7 Even more extreme than the accusations about
8 fraudulent transfer are the Committee's arguments that the plan
9 support agreements are premised, as they say, "on a lie." They
10 claim that we have not reached a settlement with over 60,000
11 claimants. They claim that the plan support agreements have
12 been fraudulently and collusively constructed with exaggerated
13 claim populations. And I ask again, Your Honor, what is the
14 factual basis for any of those accusations? The Committee
15 offers none. These accusations are false. They're outrageous.
16 And you're going to hear from one of the plaintiff's firms who
17 supports the plan support agreements, who wants to address
18 those allegations.

19 But, ultimately, Your Honor, in our view, the proof
20 of the support will be in the voting. If this opposing handful
21 of firms are so sure that LTL's support is all a fabrication,
22 they should welcome a quick plan confirmation process and an
23 opportunity for claimants, and I say claimants not law firms,
24 to vote on a proposed plan.

25 Instead, what they're asking Your Honor to do is to

1 prevent any process. They've asked for an immediate stay of
2 this case. They've asked for an immediate dismissal of this
3 case. They don't want the debtor to obtain any further
4 support. They don't want the FCR to have an opportunity to
5 weigh in. They don't want the claimants to have an opportunity
6 to vote. That's simply not appropriate that a group of firms
7 who represent a minority of the claimants could ask this Court
8 to stop this process for their own interests, which are not
9 entirely clear because they don't appear to be in the interests
10 of their own clients.

11 Now, in connection with what can only be viewed as a
12 scorched earth litigation strategy in opposition to this case
13 and the unprecedented \$8.9 billion settlement on the table, the
14 Committee is seeking a number of depositions. They have asked
15 for depositions of Mr. Kim, of Mr. Hass with J&J, with
16 Mr. Wuesthoff, the chair of the LTL board, you may remember.
17 It also seeks depositions from two of the plaintiff's firms who
18 signed plan support agreements.

19 THE COURT: I'm sorry.

20 MR. GORDON: No problem.

21 THE COURT: Do we need to address this now?

22 We're having a technological issue. With everybody
23 hooked up to the Court's WiFi in various capacities, we've lost
24 bandwidth, so --

25 THE CLERK: (Indiscernible)

1 THE COURT: What camera have we lost?

2 THE CLERK: The iPad is connected to WiFi and it
3 keeps losing the signal.

4 UNIDENTIFIED SPEAKER: Can I make a suggestion, Your
5 Honor?

6 THE COURT: Absolutely.

7 UNIDENTIFIED SPEAKER: Anyone that's not making a
8 presentation, why don't we just get off the WiFi.

9 THE COURT: That would help. Go to your own 5G or
10 whatever other network you have, if you can.

11 UNIDENTIFIED SPEAKER: I've been watching it go, get
12 kicked off, get back on. I'm just wondering if other folks are
13 having the same issue.

14 THE COURT: I knew we should have gotten the better
15 plan.

16 (Laughter)

17 THE CLERK: The other option is for the time being,
18 just turn your camera around, Judge (indiscernible).

19 THE COURT: Turn this camera around?

20 THE CLERK: (Indiscernible) courtroom. At least that
21 provides (indiscernible) Mr. Gordon.

22 THE COURT: (Indiscernible) Mr. Gordon. Nobody needs
23 to see me.

24 How's that?

25 THE CLERK: Good. (Indiscernible)

1 MR. GORDON: We ready?

2 THE COURT: Continue.

3 MR. GORDON: Let me just go back.

4 THE COURT: Yes.

5 MR. GORDON: As I was saying, Your Honor, I think you
6 may have missed part of this. As part of what we would view as
7 a scorched earth litigation strategy and opposition to this
8 case, and an opposition to an unprecedented \$8.9 billion
9 settlement on the table, the Committee is seeking the
10 depositions of Mr. Kim, that Your Honor may recall is the chief
11 legal officer at LTL; Mr. Haas, who's with J&J; Mr. Wuesthoff,
12 who is on the board of LTL. It also seeks depositions from two
13 of the plaintiff's firms who signed plan support agreements.

14 We, in turn -- the debtor, in turn, intends to depose
15 members of the Ad Hoc Committee. There's also been some
16 written discovery served, I think just yesterday, by this Ad
17 Hoc Committee. I mention this only to say that we believe this
18 discovery will show that there's no basis whatsoever for any of
19 the inflammatory accusations contained in the Committee's
20 filing. Instead, we believe the discovery will show an
21 aggressive concerted effort by the plaintiff firms on this
22 Committee to scuttle this agreement through threats and
23 intimidation directed at LTL, J&J, and their respective boards,
24 their respective directors and officers, and the plaintiff
25 firms who support the plan. That's the headline that should be

1 written about this case, that a group of firms representing a
2 minority of claimants seeks to defy the will of the substantial
3 majority of the claimants.

4 Let me move on.

5 Interesting, Your Honor, in the midst of a lengthy
6 tirade about the fraudulent nature of everything, the new
7 financing arrangements, the bankruptcy filing, the plan
8 support, the Committee argues that LTL is still not in
9 financial distress. And they, in fact, I think the words they
10 use are that LTL, notwithstanding the new financing
11 arrangements, cannot provide any evidence that it was in
12 financial distress.

13 In other words, Your Honor, at the same time the
14 Committee breathlessly accuses LTL and J&J of deliberately
15 harming talc claimants by effectuating the largest fraudulent
16 transfer in history, they maintain that LTL, despite the new
17 financing arrangements, is not in financial distress. So which
18 is it?

19 You know, we've seen these contradictory positions
20 before. Is LTL financially distressed or not? Is it insolvent
21 or not? The answers to these questions, Your Honor, are
22 critical because as recognized by the Third Circuit, there's a
23 difference between financial distress and insolvency. You may
24 recall that the Court said to say that a debtor is in financial
25 distress is not to say it must necessarily be insolvent.

1 The Code conspicuously does not contain any
2 particular insolvency requirement. LTL is financially
3 distressed. As a result, bankruptcy is available to it. LTL
4 is not insolvent. As a result, there is no basis for a
5 fraudulent transfer claim.

6 So to conclude, Your Honor, the second Chapter 11
7 case, this case, has drawn substantial support. It's supported
8 by the unprecedented \$8.9 billion financial commitment by LTL
9 and J&J. It's supported by over 60,000 claimants who have
10 signed and delivered plan support agreements, and support is
11 continuing to come in. This claimant's support validates the
12 good faith basis of this filing. It validates the proper
13 purpose of this proceeding.

14 The Court should not permit a group of firms who
15 represent a minority of the claimants to hijack this case
16 before it can even begin. That is especially the case given
17 the utter absence of factual support for the inflammatory and
18 defamatory accusations this group of firms is making.

19 Thank you, Your Honor.

20 THE COURT: Thank you, Mr. Gordon. Before we hear
21 from the Ad Hoc group and other plaintiffs, is there anyone
22 supporting the debtor's position as far as an introductory
23 statement?

24 MR. WATTS: Good morning, Your Honor.

25 THE COURT: Good morning.

1 Ms. Richenderfer?

2 MS. RICHENDERFER: I want to thank you, Your Honor.
3 I'm looking for the clock. I guess it is good afternoon.

4 THE COURT: Oh, it's afternoon.

5 MS. RICHENDERFER: Afternoon, yes, it's afternoon.

6 Linda Richenderfer from the Office of the United
7 States Trustee. Your Honor, I can't say that I ever expected
8 myself to be back here on this case. I like the trip to
9 Trenton and very much appreciate the ability to appear in front
10 of Your Honor but never thought it was going to be again in
11 terms of this case. Never, ever.

12 Just a few quick points. First of all, the United
13 States Trustee is moving as quickly as it possibly can to
14 appoint committees in this case. As of Friday, we had the
15 questionnaire for both a Tort Claimants Committee and an
16 Unsecured Creditors Committee posted on the website. And, in
17 addition, we have sent out the questionnaire to all the law
18 firms.

19 We took the top 30 list from the first case, many of
20 whom have disappeared. We took the 18 firms that are listed in
21 the second case, asked the debtor for the other 12 and haven't
22 received it yet. But we sent that out to everyone. So this is
23 also my way of making a public announcement that if anybody
24 here hasn't seen it yet, it's on the website. And if you have
25 a problem finding it, there's three of us here from the U.S.

1 Trustee's Office, and we'll make sure that you can get a copy
2 of it.

3 We are moving as quickly as quickly as we can, Your
4 Honor. With any luck, we'll have at least a Tort Claimants
5 Committee by the next hearing which is on the 18th, but I can't
6 promise that. And I have no unsecured creditor information yet
7 from the debtor, so I don't know when that committee, if one
8 will be appointed. It may be that there's no interest; I don't
9 know. But I do know there were a lot of parties who never got
10 paid in the first case before it was dismissed.

11 The interviewing in fact is going to start tomorrow
12 just so people are aware of that.

13 Your Honor, I think that's leading up to my first
14 point that I did want to make before the Court was that we are
15 very concerned about their request to move forward to appoint
16 the FCR and the mediators by the April 18th hearing or I guess
17 on the April 18th hearing when we will not yet have a formal
18 committee yet formed.

19 And so I don't know whether the request is going to
20 be heard later today or not. I didn't meant to jump ahead if
21 it is, but we would request that the FCR, the mediators, that
22 that be delayed until after we can get a committee in place who
23 can also be heard on those topics which are extremely
24 important.

25 Your Honor, I think that they are very important, and

1 I'm ad libbing here a little bit because from what I'm hearing
2 today about the timetable, there seems to have been some
3 activity during the first case that is now being carried over
4 that really benefitted the second case. And I think that we're
5 going to have to get some clearer understanding of where the
6 first case ended and where the second case started because it
7 doesn't seem like the first case ended at 1:49 on April 4th and
8 that the second case started 2 hours and 11 minutes later. It
9 seems like there was a large overlap, a month, two months. To
10 me, that's still a large overlap between the two cases.

11 Your Honor, we are told that I think Mr. Gordon said
12 two-thirds of the claimants are represented by parties that
13 have signed on to plan support agreements. I think it was two-
14 thirds, so we'll say 66 percent. And it was 60- or 70,000
15 claimants.

16 Your Honor, I'm struggling with reconciling that
17 because I've gone back and there are 18 firms that were listed
18 in the first case as part of the top 30 firms that are not
19 listed for the second case. And there are of the top 30 firms
20 that were listed in the first case, only five of them are
21 purported signatories to this plan or this support agreement,
22 whatever it's being called. I'm not quite sure.

23

24 And I think that of the top 18 that were identified
25 in this case, there are 11 who purportedly are not part of any

1 plan support agreement or whatever it is that they're calling
2 it. Your Honor, my point is this, that we heard several times
3 Mr. Gordon state that it's this large majority of the claimants
4 and that it's two-thirds of the claimants.

5 Your Honor, I don't know how the math works out. I
6 really don't. And I will tell you this, that Mr. Watts' firm
7 didn't appear in the first list. Now all of a sudden, it's on
8 the second list. Mr. Watts also made statements about being
9 involved in the Imerys case. Your Honor may or may not know
10 that I along with one of my other trial attorneys in the
11 Delaware office have been the trial attorneys from the United
12 States Trustee's Office on that case since day one. He did not
13 vote. He had no claimants that voted in that case when the
14 first plan was up.

15 I don't know what positions he's playing in these
16 cases. I did hear him identify a number of claimants which is
17 one of the concerns of the U.S. Trustee's Office. Where are
18 these claimants coming from and who are these claimants?
19 Because we just can't reconcile them with the numbers that we
20 had that we were discussing and that were in front of us in the
21 first case. And I can't reconcile some of the statements with
22 things that I know about from the Imerys case.

23 I know the attorneys there very well. I know who's
24 involved in that case. I know who voted in that case. I
25 myself checked. There were no votes that were made in that

1 case on the first plan, which eventually was not -- I think it
2 fell short by three percent. But there were no votes submitted
3 on behalf of his firm, so I don't know what his role is in all
4 of this.

5 But I will say this, I don't know where the 67 or
6 60,000 or 70,000 come from. It's certainly something that
7 we'll be looking into when we vote to form the Talc Claimants
8 Committee here. I wonder where the numbers are. And I was
9 very interested in the math that was just done because that's
10 presuming that all 60- or 70,000 of these claimants that we're
11 told are represented by these firms. It's assuming that
12 they're going to get past the stage of filling out the
13 questionnaire that they'll have to get through.

14 And I don't know because most of those claimants
15 evidently did not file a lawsuit because otherwise they would
16 have been accounted for in the first case, in the list of top
17 30 law firms. So I don't know where these other law firms are
18 coming from. I have asked debtors to give us a list of the
19 complete top 30 which is what we normally get. I believe
20 they're working on it. I don't have it yet, though. And we're
21 marching forward. And Your Honor will be hearing from us later
22 when we get to certain motions that are before Your Honor
23 today.

24
25 I just want to make those points and make sure that

1 this case, that we don't get off on some of the tangents and
2 that we look at who the true parties in interest here are, Your
3 Honor and that we hear from them. And as to the 60- or 70,000
4 claimants, I don't know where that number comes from. I can't
5 reconcile it with what we heard in the first case. Thank you,
6 Your Honor.

7 THE COURT: I appreciate your concerns. The Court
8 shares much of it. And we'll await.

9 Mr. Ruckdeschel, I can give you four and a half
10 minutes.

11 MR. RUCKDESCHEL: Your Honor, thank you very much.
12 Jonathan Ruckdeschel on behalf of Paul Crouch, individually,
13 and as the Executor of his mother's estate. And I will meet
14 that deadline.

15 Your Honor, the filing as we've heard and I'm going
16 to try and not repeat things that have been said before, but
17 the overall scheme here is taking state law rights of claimants
18 sickened by Johnson & Johnson's asbestos-contaminated products,
19 unrestricted state law rights that had access with respect to
20 Johnson & Johnson Consumer to at least \$61 billion of assets
21 and, with respect to Johnson & Johnson, an unlimited pot of
22 assets and to transform them into restricted rights against an
23 artificially limited pot of money that will be created by this
24 plan.

25